



CONTRA COSTA COUNTY OFFICE OF THE SHERIFF  
DAVID O. LIVINGSTON  
SHERIFF – CORONER

VIA EMAIL:

April 5, 2019

Ms. Lisa Fernandez  
KTVU Channel 2  
lisa.fernandez@foxtv.com

Re: Your California Public Records Act Request

Dear Ms. Fernandez:

I am writing in response to your email received on January 2, 2019, in which you made a request pursuant to the California Public Records Act (Gov't. Code § 6250 *et seq.*) for records under Penal Code section 832.7 regarding pre-2019 incidents. As you are aware, until March 19, 2019 at 5:00 p.m., there was a court order prohibiting the Sheriff's Office from disclosing these records.

Specifically, you requested, *"a year's worth of information [and] dating back five years."* You later amended your request and asked for *"how many complaints from the public about police misconduct regarding the items covered in SB 1421 have you gotten in this time period. (Jan. 1, 2017 first, and then back to Jan. 1, 2014)...how many department-initiated internal affairs investigations regarding items covered in SB 1421 have you conducted in this time period...[and] how many claims and lawsuits have you received and settled regarding the items covered in SB 1421 in the same time period."*

We are treating your second request as an amendment to the original request, and we have, for purposes of processing and response, treating the two requests as a single request covering the period beginning on January 1, 2014.

We must advise you that your request raises significant and difficult compliance issues and implicates the "undue burden" exemption from release pursuant to California Government Code § 6255, as it constitutes a voluminous request, involving extensive segregation of exempt from non-exempt materials, that would impose an unwarranted burden on this agency's resources.

In order to fulfill your request, our office would need to conduct a lengthy and difficult manual review of hundreds of files, many each hundreds of pages in size, located in our Internal Affairs Unit in order to locate any potentially responsive records. We would need to search for each file to determine if its contents met the parameters that Senate Bill 1421 put into place. Upon locating such documents, should they exist, each would need to be carefully reviewed to redact security information, privacy information, and other information properly excluded from public release. This would be a monumental task, likely requiring several levels of review, including counsel, and inquiry would need to be made respecting whether certain information was considered security information by one or several operational divisions of the Office of the Sheriff. No mechanism currently exists to fulfill your request except to devote a substantial portion of the Sheriff's Office's work effort to satisfying this overly burdensome request. Thus, to fulfill your request exceeds the reasonableness standards of the Public Records Act.

As it may be theoretically possible, but entirely unreasonable, to search for the requested information by manually retrieving and reviewing hundreds of individual records to search for your requested information, and then with the assistance of counsel redacting potentially responsive documents, we assert our objection to your request pursuant to § 6255 of the Government Code on the ground of undue burden. In the case of *Rosenthal v. Hansen*, 34 Cal. App. 3d 754, 757, 761, 110 Cal. Rptr. 257 (1973), the court imposed a judicially created "reasonableness" standard to restrict access to public records where the request was found to be voluminous.

In a similar vein, the Court in *American Civil Liberties Union Foundation v. Deukmejian*, 32 Cal. 3d 440, 452-53, 651 P.2d 822, 186 Cal. Rptr. 235 (1982), held that where a public agency can substantiate that a voluminous request, involving extensive segregation of exempt from non-exempt materials, would impose an unwarranted burden on the agency's resources, the public interest in nondisclosure outweighs the public interest in disclosure. *See also Cal. First Amendment Coalition v. Superior Court*, 67 Cal. App. 4<sup>th</sup> 159, 166, 78 Cal. Rptr. 847 (1998) ("A Clearly framed request which requires an agency to search an enormous volume of data for a 'needle in the haystack' or, conversely, a request which compels the production of a huge volume of material may be objectionable as unduly burdensome [citations omitted].") In a more recent decision, *Fredericks v. Superior Court (San Diego)*, 233 Cal. App. 4<sup>th</sup> 209 (2015), the Court noted that,

"The basic rule is that an agency must comply with a request if responsive records can be located with reasonable effort. (*California First Amendment Coalition, supra*, 67 Cal. App. 4<sup>th</sup> 159, 165-166.) If the agency would be required to create a new set of public records in order to provide responses to a CPRA request, such agency action may be found to exceed its statutory duties. (*Haynie, supra*, 26 Cal. 4<sup>th</sup> at p. 1075.)"

The Court went on to say that,

“Section 6255, subdivision (a), expressly provides that an agency can justify withholding any record, even if no express statutory exemption from production applies, if the agency can show ‘that on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record.’

\* \* \* \* \*

“Section 6255 ‘imposes on the California courts a duty to weigh the benefits and costs of disclosure in each particular case.’ [Citation.] A court performing this balancing test is authorized to take into account any expense and inconvenience involved in segregating non-exempt from exempt information, because the statutory term ‘public interest’ ‘encompasses public concern with the cost and efficiency of government.’ [Citation.] We may thus take it as established that the Act includes a policy favoring the efficiency of government and limitation of its costs. “

Further, the *Fredericks* Court determined, in a situation similar to your request,

“ ... that the Department would have to undertake a complicated, time-consuming review, redaction, and production process to arrange for the release of nonexempt information, as currently sought by *Fredericks*. ... Even though the plain language of section 6254, subdivision (f)(2) imposes no time limitation on disclosure of information sought, not all such requested disclosures must be granted if the trial court is appropriately presented with relevant competing public interest factors, which may properly include considerations about a fiscal and workload burden being imposed upon a public agency by a particular request (§6255, subd. (a).)”

I hope you will appreciate that there is no way to identify and examine every Internal Affairs file to locate the records you seek except by reviewing an enormous volume of records. To do so would disrupt our operations and compromise our public safety mission. It would present an unjustifiable and unreasonable undue burden, and thus we must decline to perform the exhaustive search you seek.

In response to your request for information regarding claims and lawsuits, we must advise that we do not have responsive records. You may wish to make a request to Risk Management (925) 335-1400 or County Counsel (925) 335-1800 for such information.

Pursuant to Gov. Code § 6253.1, our office invites you to make a narrowed request, either by limiting the scope of the records sought, by providing names of individuals whose records you seek, or by narrowing the time frame for which you seek records. Given our explanation that the search through the voluminous files necessary to fulfill your request constitutes an “undue burden” under the “reasonableness” standards of the

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Public Records Act, I am sure you can appreciate that we cannot, as you request, provide you with the number of "*department-initiated internal affairs investigations regarding items covered in SB 1421.*" Should you be able to narrow or focus your request using any or all of the above recommended parameters, please submit a new Public Records Act request to our office.

Sincerely,

**DAVID O. LIVINGSTON, Sheriff**



Carlye Slover, Sheriff's Specialist  
Professional Standards Division